

conformance with the official survey system as provided for in division 2 of article III of chapter 33 of this Code.

(b) The director of the planning and development department shall review all such petitions and forward his written recommendations to the mayor and city council for their approval. The director of the planning and development department shall also maintain a permanent record of all such petitions and upon final passage of an appropriate ordinance by city council approving and establishing a name for a private street, such name shall be entered into all appropriate records of the city. No private street name shall be approved or established for an existing private street by action of the city council unless such name is in conformance with the duly adopted rules and policies of the planning commission pertaining to the naming of public streets and subject to such other additional rules and standards as provided for herein.

(Code 1968, § 42-25; Ord. No. 77-652, § 1, 3-29-77)

#### **Sec. 41-36. Changes of existing private street names.**

No private street name duly established under the terms and conditions of this article shall be changed, whether established by plat approved by the planning commission or by action of the city council, unless such change is approved by a majority (51 percent) of the property owners adjacent to such private street (lienholders excluded). The city council or the planning commission may approve a change in the name of any duly established private street if such change is in conformance with the provisions of this article.

(Code 1968, § 42-26; Ord. No. 77-652, § 1, 3-29-77)

#### **Secs. 41-37, 41-38. Reserved.**

**Editor's note**—Ord. No. 99-262, § 7, adopted March 24, 1999, repealed §§ 41-37, 41-38, in their entirety. Formerly, said sections pertained to private street naming standards; installation and maintenance of private street marker. See the Code Comparative Table.

#### **Secs. 41-39—41-49. Reserved.**

### **ARTICLE III. REGULATION OF TOWERS**

#### **Sec. 41-50. Definitions.**

As used in this article, the following words and terms shall have the meanings ascribed below, unless the context of their usage clearly indicates another meaning:

*Alteration* means any modification, replacement, or reconstruction that increases the height or materially increases the dimension of a tower structure.

*Antenna* means a device or system of wires, poles, rods, dishes, discs or similar devices used for the transmission and/or receipt of electromagnetic waves.

*Camouflage design or camouflage tower* means the design of a tower or tower structure that blends into the surrounding environment and is visually unobtrusive. Examples of a camouflage design or tower are architecturally screened, roof-mounted antenna/array/equipment, building-mounted antenna/array/equipment that is painted and treated as an architectural element to blend with the existing building, designs that conceal the antenna/array/equipment, man-made trees, clock towers, bell towers, steeples, light poles, and similar alternative-design mounting structures.

*Commission* means the tower permit commission.

*Department* means the department of planning and development.

*Director* means the director or director's designee of the department.

*FAA* means the Federal Aviation Administration.

*FCC* means the Federal Communications Commission.

*Grade* means the lowest point of elevation of the finished surface of the ground, paving or sidewalk within the area between the building or structure and a line five feet from the building or structure.

*HAHC* means the Houston Archaeological and Historical Commission.

*Height of the building* means the vertical distance above a reference datum measured to the highest point of the coping of a flat roof or to the deck line of a mansard roof or to the average height of the highest gable of a pitched or hipped roof. The reference datum shall be selected by either of the following, whichever yields a greater height of the building:

- a. The elevation of the highest adjoining sidewalk or ground surface within a five-foot horizontal distance of the exterior

wall of the building when the sidewalk or ground surface is not more than ten feet above the lowest grade.

- b. An elevation ten feet higher than the lowest grade when the sidewalk or ground surface described in item (a) above is more than ten feet above lowest grade.

The height of a stepped or terraced building is the maximum height of any segment of the building.

*Height of the tower* means the vertical distance between the finished grade at the base of the tower or the lowest point of contact with the building, and the highest point of the tower structure, excluding the antenna, if any.

*High mast light structure* means a fixed, free-standing uninhabitable structure of a minimum height of 100 feet, specifically designed to carry light fixtures that is built on land on, along or adjacent to streets, roads, highways and bridges maintained by the state or political subdivision of the state.

*Historic district* means a district so designated by city council under article III of chapter 33 of this Code or an area for which an application for designation has been initiated thereunder and has not been disapproved by city council.

*Landmark* means a property so designated by city council under article III of chapter 33 of this Code or a property for which an application for designation has been initiated thereunder and has not been disapproved by city council.

*Park* means any property of the state or political subdivision thereof that is designated for and restricted to use by the public for park purposes.

*Public utility* means any person, company, corporation, cooperative corporation, partnership, or any combination thereof, that is subject to both a municipal franchise agreement and the comprehensive regulatory system established by and defined in the Texas Public Utility Regulatory Act, that owns or operates for compensation equipment or facilities for:

- a. Producing, generating, transmitting, distributing, selling, or furnishing electricity; or

- b. The conveyance, transmission, or reception of communications over a telephone system as a dominant carrier.

The term "public utility" shall not include, as is defined in the Public Utility Regulatory Act, telegraph services, television stations, radio stations, community antenna television services, general radio-telephone services, or radio-telephone services authorized under the Public Mobile Radio Services rules of the Federal Communications Commission or private water companies.

*Residence* means any permanent building or structure containing habitable rooms for nontransient occupancy, designed and used primarily for living, sleeping, cooking and eating, which is intended to be used or occupied as a dwelling place for residential purposes, whether or not attached, including homes, town homes, patio-homes, duplexes, triplexes, quadraplexes, condominiums and apartments. Multi-unit complexes shall be included at a ratio of one-eighth acre of land, or any fraction thereof, as being equivalent to one residential tract. For purposes of calculating the ratio of multi-unit complex acreage to residential tracts, only that portion of the multi-unit complex acreage within the residential test area shall be considered. Hotels, motels, boarding houses, group homes, half way houses, nursing homes, hospitals, nursery schools, schools, and child care facilities shall not be considered residences. A building or structure located on a lot or tract of land used as the site of a tower shall not be considered a residence so long as its primary use is to contain, house, store, and protect materials or equipment directly related to the purpose and use of the tower.

*Residential* means pertaining to the use of land for a residence as is defined in this section.

*Residential lot* means:

- a. A lot which is included within a recorded residential subdivision subject to any enforceable, valid and unexpired residential deed restrictions upon which a residence exists or may be constructed pursuant to those valid and applicable deed restrictions, or

- b. An unrestricted lot upon which a residence exists.

*Residential restrictions* means one or more restrictive covenants limiting the use of the property to residential purposes that are contained or incorporated by reference in a properly recorded map, plat, replat, declaration, deed, judgment or other instrument filed in the county real property records, map records or deed records.

*Residential area* means the area around a proposed tower site that, within the residential test area, contains fifty percent or more tracts wholly or partially therein that are subject to residential restrictions or are in use for residential purposes.

*Residential test area* means the circular area, as described herein, surrounding a proposed tower structure. The radius of the circle shall be at least 375 feet and not more than 800 feet, and the center of the circular area shall correspond to the center of the base of the proposed tower structure. The radius of the circular area shall conform to the following ratios:

375 feet radius at a tower height of 100 feet or less

600 feet radius at a tower height of more than 100 feet but not more than 150 feet

800 feet radius at a tower height of more than 150 feet

*Scenic area* means those areas of the city so designated by city council, as listed in chapter 46 of the building code, except that, for purposes of this article, any designated scenic area that has one or more high mast light structures within its boundaries shall not be deemed a scenic area.

*Setback area* means the circular area surrounding a proposed tower structure and which delineates the area between the site of the proposed tower and the nearest residential structure or residential restricted tract of land as established in section 41-53(g) of this Code.

*Subdivision* means all land encompassed within one or more maps or plats of land within the city that is divided into two or more parts and are

recorded in the deed, map or real property records of the county or counties in which the land covered by the map or plat is located.

*Tower or tower structure* means a fixed, free-standing or guyed, uninhabitable structure, not designed as a shelter or to be occupied for any use. This definition includes, but is not limited to, any such structure supporting antennae that transmit or receive any portion of the electromagnetic spectrum of radio waves. The following are, by way of example but not limitation, towers or tower structures: guyed or freestanding monopole structures, lattice or open framed structures, antennae supports, water towers, and other similar self-supporting, trussed, or open framed structures.

*Tract* means a contiguous parcel of property under common ownership.  
(Ord. No. 91-1734, § 2, 12-11-91; Ord. No. 98-253, § 2, 4-8-98)

#### **Sec. 41-51. Tower permit required.**

(a) An application for a tower permit shall be submitted to the department and approved in accordance with the provisions of this article prior to the construction, placement or alteration of any tower or tower structure, as defined in this article and not specifically excluded herein, that is located within the boundaries of the municipality.

(b) A tower permit shall not be required for any tower repaired, replaced, or modified with no resulting increase in height or dimension and any tower repaired, replaced or modified in order to comply with the requirements of any statute, regulation, order, or rule of the FCC, the FAA, or any other federal, state or governmental agency or authority.

(c) Notwithstanding any other provision of this article, the owner of an antenna tower for which a tower permit and building permit were issued prior to April 14, 1998, may, without obtaining a new permit, upon written notice to the director, replace the tower with a new tower if the new tower structure complies with the requirements of sections 41-54 through 41-56.1 of this Code and: (i) is specifically designed to accommodate additional antenna arrays, (ii) is not more than 20

feet higher than the tower structure being replaced, (iii) is not more than 50 feet from the location of the tower structure being replaced and (iv) the center of the tower structure is no closer to the nearest residence than the center of the tower structure it replaces. The new tower structure shall be assigned the same permit number as the tower structure it replaces. A tower structure may be replaced only once under this subsection.  
(Ord. No. 91-1734, § 2, 12-11-91; Ord. No. 98-253, § 2, 4-8-98)

#### **Sec. 41-52. Exemptions.**

This article does not apply to the following structures:

- (1) Church bell towers and religious symbols associated with a place of worship;
- (2) Tower structures less than 60 feet in height;
- (3) Tower structures used primarily for the support of amateur and citizens' band radio antennae;
- (4) Tower structures that are attached to, placed upon, or constructed on top of a building provided that the height of the tower structure does not exceed 60 feet or the height of the building upon which the tower is constructed, whichever is less;
- (5) Tower structures on real property owned, leased, held or used, or dedicated for use by a public utility for rendering its service, such as tower structures used primarily for the transmission of electrical power by a public utility or the conveyance of communications over a telephone wire-line system operated by a public utility;
- (6) High mast tower structures or antennas built on land on, along or adjacent to streets, roads, highways and bridges maintained by the state or a political subdivision of the state;
- (7) Tower structures constructed or placed on land or other structures owned, leased, held or dedicated for use by the state or federal government or any political subdivision thereof, which land or other struc-

tures are used by the governmental entity primarily for rendering fire, police or other public protection services or utility services, whether or not the tower structure is used jointly by the governmental entity and any other public or private person or entity for other and additional public or private purposes; and

- (8) Temporary tower structures used as or in conjunction with construction cranes.

(Ord. No. 91-1734, § 2, 12-11-91; Ord. No. 98-253, § 2, 4-8-98)

### Sec. 41-53. Location of towers.

(a) A tower permit shall not be approved for the construction of a tower on a lot, tract or parcel of land where the construction of a tower is prohibited, expressly or impliedly, by duly recorded and unexpired deed restrictions or covenants running with the land.

(b) In a residential area, a tower permit shall not be approved for the construction or alteration of a tower structure.

(c) A tower permit shall not be approved for the construction or alteration of a tower structure unless the proposed tower structure is located a distance at least equal to the applicable setback area established by subsection (g).

(d) In an historic district, a tower permit shall not be approved for the construction or alteration of a tower structure unless the proposed tower conforms to the requirements for camouflage design and the HAHC has issued a certificate of appropriateness for the construction of the proposed tower.

(e) In an area within one-quarter mile of an historic district or landmark, a tower permit shall not be approved for the construction or alteration of a tower structure unless:

- (1) The proposed tower is located from the historic district or landmark, as applicable, a distance at least equal to the applicable setback area established by subsection (g), which shall for this limited purpose apply without regard to the existence of any residential lot; for purposes of this

requirement, measurements shall be made from the perimeter of the historic district or landmark; and

- (2) One or more intervening buildings, structures, topological features or trees will substantially obstruct a person's sight line of the tower structure from ground level at the perimeter of the historic district or landmark, as applicable.

(f) A tower permit shall not be issued for the construction or alteration of a tower structure in a scenic area, nor shall a tower permit be issued for the construction or alteration of a tower structure in a park or on a tract surrounded by a park.

(g) A tower permit shall not be approved for the construction or alteration of a tower structure unless the distance between the center of the base of a tower and the nearest residential lot is at least one and one-half times the height of the tower or tower structure. The foregoing measurement shall be made to the nearest point on the property line of the residential lot, unless the tower permit application includes a category 3, condition II survey, as defined by the Texas Surveyors Association, of all properties within the setback area. If the survey is provided, the measurement shall instead be made as follows:

- (1) If a residence has been constructed on the lot, the measurement shall be from the tower structure to the nearest outside wall of the residential structure on each lot; or
- (2) If a residence has not been constructed on the lot, the measurement shall be from the tower structure to the center of the residential lot minus 25 feet.

(h) A tower permit shall not be approved for the construction or alteration of a tower structure within 1,000 feet of an approved tower structure, other than a tower structure for which a permit would not be required under this article. For purposes of this requirement, a tower is considered to be "approved" when a tower permit has been issued pursuant to this article and the tower structure has been constructed or any building permit issued thereunder remains in effect. The

director shall promulgate rules and procedures for establishing precedent to the extent of conflict between two or more tower structures.

(i) Property uses and distances referred to in this section shall be determined as of the date and time that the completed tower permit application is filed.

(Ord. No. 91-1734, § 2, 12-11-91; Ord. No. 98-253, § 2, 4-8-98)

#### **Sec. 41-53.1. Tower structure.**

Each antenna tower structure for which a permit is approved and issued shall be designed, engineered and constructed to accommodate the placement of a minimum of two antenna arrays. This requirement shall not apply to a camouflage tower.

(Ord. No. 98-253, § 2, 4-8-98)

#### **Sec. 41-54. Security fence.**

(a) The base of a tower shall be completely enclosed by a fence, wall, or barrier which limits climbing access to the tower and any supporting systems, lines, wires, buildings or other structures.

(b) The fence, wall or barrier required by subsection (a) shall not be less than eight feet in height with no openings, holes or gaps larger than four inches measured in any direction. Gates and doors opening directly into the area enclosed by a fence, wall or barrier, as required by this section, shall be equipped with a lock to keep and capable of keeping the doors or gates securely closed and locked at all times.

(c) The requirements of this section do not apply to:

- (1) Any tower located on a building that is not designed or built primarily to support the tower, provided that the general public has no physical access to the tower, or
- (2) Existing tower sites having security fences at least six feet in height.

(Ord. No. 91-1734, § 2, 12-11-91; Ord. No. 98-253, § 2, 4-8-98)

#### **Sec. 41-55. Screening fence.**

(a) The base of a tower, including all mechanical equipment and accessory structures, shall be screened from view of residential lots by a wooden, substantially opaque screening fence designed and built to provide privacy with a minimum height of eight feet.

(b) The screening fence may contain gates or doors allowing access to the tower and accessory structures for maintenance purposes, which shall be kept completely closed except for maintenance purposes and shall be located a minimum of 18 feet from the public right-of-way.

(c) The requirements of this section do not apply to:

- (1) Any tower constructed or placed a distance of more than two times the height of the tower structure from all residential lots, or
- (2) Any tower located on a building that is not designed or built primarily to support the tower, provided that the general public has no physical access to the tower.

(d) When both sections 41-54 and 41-55 of this Code are applicable, a single fence conforming to all applicable requirements of both sections may be provided.

(Ord. No. 91-1734, § 2, 12-11-91; Ord. No. 98-253, § 2, 4-8-98)

#### **Sec. 41-56. Landscaping.**

(a) A tower site shall have landscaping maintained in a healthy, growing condition at all times and in compliance with all applicable ordinances, deed restrictions and regulations.

(b) At a minimum, a tower site shall have one large shrub capable of reaching a minimum height of four feet for each four linear feet of required screening fence; provided that not less than eight large shrubs shall be provided for each tower site. The shrubs required by this subsection shall be installed at the tower site along the exterior side of the screening fence required in section 41-55 of this Code. All shrubs provided pursuant to this

subsection shall be selected from the list of shrubs identified on Appendix D to article V, chapter 33, of this Code.

(c) At a minimum, a tower site shall have one street tree, with a minimum caliper of four inches, for each 50 linear feet of required screening fence; provided that not less than one street tree along each public right-of-way bordering the host tract shall be provided at each tower site. All trees shall be selected from the list of street trees identified on Appendix A-3 to article V, chapter 33, of this Code.

(d) The person or entity in whose name the tower permit is issued shall have complete responsibility for the maintenance of all landscaping required by this section.

(e) Any tower site that is excluded from the screening requirements of section 41-55(c) of this Code shall also be excluded from the landscape requirements of this section for which any amount of linear footage of screening fence is required.

(Ord. No. 91-1734, § 2, 12-11-91; Ord. No. 98-253, § 2, 4-8-98)

#### **Sec. 41-56.1. Signs and lights.**

(a) Lettering, signs, symbols, images or trademarks large enough to be legible to occupants of vehicular traffic on any adjacent roadway shall not be placed on or affixed to any part of a tower, antenna array or antenna, other than as required by FCC regulations regarding tower registration or other applicable law.

(b) A tower or tower structure shall not be artificially lighted, unless required by the FAA or other applicable authority. If lighting is required by law or regulation, a design that reasonably minimizes disturbance to any adjacent residence(s) or landmark shall be utilized.

(Ord. No. 98-253, § 2, 4-8-98)

#### **Sec. 41-57. Application procedures for a tower permit.**

(a) An application for a tower permit shall be submitted to the department in the time and manner prescribed by the director. The applicant shall, with the filing of the completed tower permit application, submit payment of the appro-

priate tower permit fees established by the director and approved by city council that are calculated to reasonably cover the expenses of administering the provisions of this article.

(b) The application shall not be considered complete unless accompanied by any drawings, descriptive data, filing fees, ownership information, and other pertinent data that may be required by the director. Each application for a tower permit or for a waiver shall include envelopes addressed to the owners and a complete list of those owners, as is indicated by the most recently approved tax rolls, of all properties within the residential test area of the proposed tower site.

(c) In the event that any of the required documentation, data, reports or drawings contain any false or erroneous information known to the applicant, then any permit issued pursuant to that false or erroneous information shall be void with the same force and effect as if it had never been issued.

(d) The director shall issue a permit for construction, placement or alteration of a tower only if it meets the requirements of this article.

(e) On or before the thirtieth calendar day following the filing of the required application, the director shall issue to the applicant a written notice of disapproval or preliminary approval of the tower permit. Any notice of disapproval of a tower permit application must include a written report explaining in detail the reasons for disapproval. Any preliminary approval shall be subject to the protest provisions of section 41-60 of this Code, and, if no protest is timely filed thereunder, shall become a final approval on the business day next following the close of the protest period. The issuance of a written notice to the applicant shall be complete upon the deposit of the properly addressed notice in the United States mail, first class postage paid.

(Ord. No. 91-1734, § 2, 12-11-91; Ord. No. 98-253, § 2, 4-8-98)

#### **Sec. 41-58. Notice of pending application.**

(a) The notice requirements of this section apply only to applications for tower permits for the construction, placement or alteration of tow-

ers subject to the requirements of this article and for waivers from the requirements of this article. When an application for waiver is not filed as part of the original application for a tower permit, the notice requirements of this section apply separately to the waiver application.

(b) The applicant for a tower permit must post and use reasonable efforts to maintain a sign on the subject tower site for a minimum of 30 calendar days beginning no later than the sixth calendar day following the date of the filing of the required completed application with the department. The sign shall be posted no more than 15 feet from the public right-of-way that is used as access to the tower site. The sign shall face each public right-of-way bordering the tower site and the lettering on the sign shall be legible from the public right of way. Each sign shall be a minimum of four by eight feet in size, with lettering that complies with specifications promulgated by the director. The sign shall contain at a minimum the following items of information:

- (1) That this is the proposed site of a tower;
- (2) The proposed maximum height above grade of the proposed tower;
- (3) The tower permit application number assigned to this project by the department; and
- (4) The telephone number of the department where additional information concerning this project may be obtained.

The applicant shall remove the sign from the subject tower site after (i) the permit is obtained or (ii) the appeals process is complete.

(c) If, in the opinion of the director, compliance with the requirements of this section is insufficient to provide adequate notification of the pending tower permit application, the director may require additional signs to be erected at locations as he deems advisable.

(d) Written notice of the filing of each application for a tower permit or an application for a waiver, as provided for herein, shall be given to all property owners within the boundaries of the residential area or setback area, as applicable, determined in accordance with the provisions of

section 41-53(g) of this Code, as is indicated by the most recently approved tax rolls. Notice shall also be given to any civic organization, property owners association, or any other interested group, with identifiable boundaries, provided that the organization, association or group is registered with the department in a manner prescribed by the director. Notice to all owners of record and civic organizations registered with the department shall be deemed given if properly addressed and deposited in the United States mail, with first class postage paid. The required written notice shall be in a form prescribed by the director and shall be mailed no later than the tenth calendar day following the filing of the required completed application. The written notice shall include a map showing the proposed tower site and the surrounding residential test area or setback area, as applicable.

(e) Written notice shall be published at least once in a local newspaper of general circulation by the department not later than the seventh calendar day following the date of filing of the required completed application. The notice shall be published in the section of the newspaper in which other legal notices are commonly published, and shall be headed with the following words (or their reasonable equivalent), in conspicuous type: "NOTICE OF PROPOSED TOWER CONSTRUCTION." The notice shall state the height and location of the proposed tower site, describe the intended use of the tower, and advise that additional information may be obtained by writing or calling the office of the director of the planning and development department.

(f) The "written notice" required in subsection (d) above shall include at a minimum the following:

- (1) The name, address, and telephone number of the person or entity that will own the proposed tower structure;
- (2) The name, address, and telephone number of the applicant if different from the owner of the proposed tower;
- (3) The approximate proposed location of the tower structure including the street ad-



dress (or nearest street intersection) and the name of the subdivision or survey if there is no recorded subdivision;

- (4) The proposed use of the tower structure and site;
- (5) The proposed maximum height above grade of the proposed tower structure; and
- (6) That additional information may be obtained by writing or calling the office of the director.

(g) The applicant shall be responsible for paying all costs associated with the giving of notice under this article.

(Ord. No. 91-1734, § 2, 12-11-91; Ord. No. 98-253, § 2, 4-8-98)

#### **Sec. 41-59. Waiver.**

(a) An application for a tower permit shall not be approved for a tower that is not in conformance with the regulations prescribed in this article unless a written application for a waiver has been submitted to and approved by the commission.

(b) An applicant for a tower permit who receives written disapproval from the director may elect to submit a written application for a waiver to the commission or may appeal the denial of the permit as provided in section 41-60 of this Code. An application for a waiver from the requirements of this article may be filed simultaneously with the filing of the application for a tower permit. An application for a waiver made after the disapproval of the tower permit by the director shall be submitted not later than 2:00 p.m. on the seventh calendar day following issuance of the notice of disapproval. The director shall waive this deadline upon a finding of good cause.

(c) An application for a waiver shall be submitted in the manner prescribed by the director citing the specific provision(s) of this article from which a waiver is desired, the extent of the waiver sought, and the specific facts or reasons why the waiver is necessary along with all supporting information or documentation.

(d) The commission is authorized to consider and grant a waiver from the provisions of this article, following a public hearing, when the commission finds that each of these conditions exist:

- (1) That a literal application of this article will result in undue and unnecessary hardship to the applicant, taking into account any federal or state licenses the applicant may have received to conduct its business;
- (2) The waiver, if granted, will not be contrary to the public interest as implemented in this article;
- (3) Consistent with the city's police power authority over towers, the waiver, if granted, will not be detrimental to the public health, safety, or welfare;
- (4) The waiver, if granted, will not result in a violation of any other applicable ordinance, regulation or statute enforceable by the city; and
- (5) The waiver, if granted, will not result in the violation of any applicable deed restriction or zoning regulation or the location of a tower in a park.

(e) A waiver from the requirements of section 41-53(h) of this Code for an antenna tower shall not be granted unless, in addition to finding that each of the conditions expressed in subsection (d) above is satisfied, the commission, after public hearing, finds that no approved tower or tower structure can accommodate the applicant's proposed antenna because the applicant has demonstrated any of the following:

- (1) The approved tower or tower structure located within 1,000 feet of the proposed tower will not meet the applicant's engineering requirements;
- (2) The approved tower or tower structure located within 1,000 feet of the proposed tower is not of sufficient height to meet the applicant's specific engineering requirements;
- (3) The approved tower or tower structure located within 1,000 feet of the proposed tower does not have sufficient structural

strength and cannot reasonably be reinforced to provide sufficient structural strength;

- (4) The antenna array of the approved tower or tower structure located within 1,000 feet of the proposed tower would cause electromagnetic interference with the antenna array of the proposed tower, or the antenna on the proposed tower or tower structure to be located within 1,000 feet of the approved tower would cause interference with the antenna array of the approved tower;
  - (5) The approved tower or tower structure located within 1,000 feet of the proposed tower is not adaptable to accommodate additional antenna arrays or the costs required to share or adapt the approved tower or tower structure are unreasonable;
  - (6) The approved tower or tower structure located within 1,000 feet of the proposed tower is not available for co-location because the owner of the approved tower or tower structure or the owner of the tract on which the approved tower or tower structure is located refuses to agree to reasonable terms necessary to accommodate the requirements for the proposed antenna; or
  - (7) The approved tower or tower structure located within 1,000 feet of the proposed tower is not suitable for the specific requirements for the proposed antenna due to other factors as demonstrated by the applicant, taking into account any federal or state licenses the applicant may have received to conduct its business.
- (f) The procedures prescribed in subsections (c) and (d) of section 41-60 of this Code shall govern the hearing required on an application for a waiver.  
(Ord. No. 91-1734, § 2, 12-11-91; Ord. No. 95-104, § 1, 1-25-95; Ord. No. 98-253, § 2, 4-8-98)

**Sec. 41-60. Protest and appeal; hearing procedures.**

(a) Any property owner, association or group within the residential area or setback area, as applicable, who has reasonable grounds to believe

that approval of an application for a tower permit, the granting of a waiver, or the proposed construction will violate any applicable restriction, rule, regulation or ordinance may request a hearing before the commission to protest and present evidence establishing their allegations. The hearing request must state the specific grounds relied upon and be presented to the office of the director no later than 2:00 p.m. on the thirty-seventh calendar day following the date of filing of the required completed application for a tower permit or waiver, as applicable. Copies of all supporting documents, instruments, or other materials that are to be presented to the commission shall accompany the hearing request and shall be available for inspection and photocopying.

(b) An applicant for a tower permit that has been denied by the director has until 2:00 p.m. on the seventh calendar day following the issuance of a notice of disapproval to file a written notice of appeal in the manner prescribed by the director. The director shall waive this requirement upon a finding of good cause.

(c) Notice of the time, place and location of the public hearing at which the protest or appeal is to be presented must be given by the department before the tenth day before the date of the hearing by:

- (1) Publication in a newspaper of general circulation in the city and county in which the land that is the subject of the waiver is located;
- (2) By written notice delivered to the applicant, which shall be served by depositing the same, properly addressed and postage paid, in the United States Mail, first class postage; and
- (3) By written notice delivered to each property owner, association or group registered with the department in the manner prescribed by the director, within the setback area. The written notice shall be served by depositing the same, properly addressed and postage paid, in the United States Mail, first class postage.

(d) All properly filed appeals and protests concerning the approval or disapproval of an application for a tower permit or the granting or refusal of an application for a waiver for a particular project shall be considered by the commission in a single public hearing. The public hearing shall be scheduled by the director at the next available commission meeting, assuming that proper notice has been given.

(e) The commission, following a public hearing, is authorized to deny a tower permit that is the subject of a protest under subsection (a) upon finding, based on substantial evidence, any of the following:

- (1) The tower permit, if granted, will result in the violation of an applicable rule, regulation or ordinance enforceable by the city;
- (2) The tower permit, if granted, will result in the violation of an applicable deed restriction or zoning regulation; or
- (3) The information contained in the application is erroneous or the department's analysis of the permit application is based on erroneous information.

(f) The commission, following a public hearing, is authorized to deny a tower permit that is the subject of an appeal under subsection (b) upon finding, based on substantial evidence, that the decision of the director to deny the tower permit is erroneous or the department's analysis of the tower permit application or information therein is erroneous.

(g) If the commission denies the appeal of the denial of an application for a tower permit, a waiver or otherwise refuses to approve a tower permit as a result of a protest, the secretary of the commission shall issue a written report explaining in detail the reasons for the rejection, disapproval or refusal. The written report shall be issued not later than 30 calendar days from the date the decision was made.

(h) The decision of the commission concerning the issuance or denial of a tower permit or the granting or refusal of a waiver shall be the final administrative determination of the issue presented.

(Ord. No. 91-1734, § 2, 12-11-91; Ord. No. 95-104, § 1, 1-25-95; Ord. No. 98-253, § 2, 4-8-98)

#### **Sec. 41-61. Building permit requirement and plan review.**

(a) A tower permit obtained pursuant to the provisions of this article shall become invalid after the passage of 180 days from the date of final approval of the tower permit unless any required building permit for the construction or alteration of the tower has been obtained before the expiration of that 180-day period.

(b) The construction, placement or alteration of a tower is subject to any plan review, permitting requirement or hearing process applicable to commercial construction in general which is required either by ordinance or by the rules promulgated by the director; provided that the regulation or rules are consistent with the provisions of this article.

(Ord. No. 91-1734, § 2, 12-11-91; Ord. No. 98-253, § 2, 4-8-98)

#### **Sec. 41-62. Maintenance and inspection.**

(a) All buildings, structures, supporting structures, wires, fences or ground areas used in connection with a tower shall be maintained in a safe condition and in good working order. All equipment or machinery required by the Construction Code, the Fire Code or any other applicable regulation or ordinance for a building or structure or supporting structure or device shall be maintained in good working order. The owner or operator of a tower shall be responsible for the maintenance of the tower, supporting structures, buildings, fences and ground areas.

(b) By applying for a tower permit under this article, the applicant specifically grants permission to the city, its duly authorized agents, officials and employees, to enter upon the property for which a permit or waiver is sought, after first providing reasonable notice, for the purpose of making all inspections required or authorized to be made under this article, the Fire Code, the Construction Code, this Code or any other applicable regulation, rule or ordinance.

(Ord. No. 91-1734, § 2, 12-11-91; Ord. No. 98-253, § 2, 4-8-98; Ord. No. 02-399, § 85, 5-15-02)

#### **Sec. 41-62.1. Removal of towers.**

Any antenna or tower that is not operated for a continuous period of six months shall be consid-

ered abandoned, and the owner of the antenna or tower shall remove same within 90 days of receipt of notice from the director notifying the owner of the abandonment. If the antenna or tower is not removed within the 90 days, the city may remove the antenna or tower at the owner's expense. If there are two or more users of a single tower, then this provision shall not become effective until all users cease using the antenna or tower. The city attorney is hereby authorized to pursue all necessary legal remedies to implement the provisions of this subsection.

(Ord. No. 98-253, § 2, 4-8-98)

#### **Sec. 41-63. Deed restriction affidavit.**

(a) Every applicant for a tower permit or a waiver shall furnish to the director an affidavit setting forth that the applicant is familiar with the title to the real property to which the requested permit appertains and that the intended use will not violate any applicable deed restrictions. The affidavit shall be accompanied with a certified copy of the instruments containing the deed restrictions, the instrument of revocation or termination, the declaratory judgment or any other recorded document containing restrictions that affect the use of the property.

(b) A tower permit shall not be issued until the requested affidavit and supporting documentation has been produced. Any permit issued on the basis of erroneous documentation known to the applicant or an affidavit which contains false information known to the applicant is void with the same force and effect as if it had never been issued and without the necessity of any action by the city or any other person or agency. A tower permit shall not be issued for the construction or alteration of a tower if the use or the intended use will be in violation of the recorded deed restrictions.

(Ord. No. 91-1734, § 2, 12-11-91; Ord. No. 98-253, § 2, 4-8-98)

#### **Sec. 41-64. Permitted hours for construction and maintenance.**

Construction, placement, removal and maintenance of, and alterations or modifications to, a tower or equipment storage facility for a tower

shall not be performed except between the hours of 7:00 a.m. and 9:00 p.m. of any day, except in a bona fide emergency; provided however, that the owner, operator or his agents may perform regular maintenance between the hours of 9:00 p.m. through 7:00 a.m. as long as it does not create an unreasonable noise.

(Ord. No. 91-1734, § 2, 12-11-91; Ord. No. 98-253, § 2, 4-8-98)

#### **Sec. 41-64.1. Tower permit commission.**

(a) There is hereby created a tower permit commission of seven members. The positions of the commission shall be filled as follows:

Position 1: By a person who shall be chairman of the commission.

Position 2: By a person who is a member of a residential civic association.

Position 3: By a person who has training or a background as a land planner, surveyor, or other urban design discipline.

Position 4: By a person who has training or a background as a real estate agent or appraiser or other real estate related business.

Position 5: By a person who has training or a background in electrical engineering, physics or any discipline related to radio frequency technology.

Position 6: By a person who is a member of a residential civic association.

Position 7: By a person who has training or a background in electrical engineering, physics or any discipline related to radio frequency technology.

The city attorney may designate an attorney to represent the commission. The attorney may advise the commission on legal matters relative to topics under commission jurisdiction. The director shall serve as secretary of the commission and shall be responsible for assisting the commission to facilitate its actions and proceedings and shall respond to requests of the commission in a timely

manner. The secretary of the commission shall be responsible for and keep the minutes of the meetings of the commission, including correspondence received and sent by the commission or at its direction. The minutes shall be public records, available for inspection by the public at all reasonable times in the presence of the secretary or any member of the commission.

(b) The mayor is hereby authorized to appoint the members of the commission, subject to the approval of the city council. The terms of appointments of the commission shall be for a period of two years and until their successors are appointed and qualified. The mayor shall appoint, subject to approval by city council, another qualified person to serve the unexpired term of any vacant position. Any member of the commission may be removed at any time by the mayor without consent of the city council.

(c) Four members of the commission shall constitute a quorum. No member of the commission shall be allowed to abstain from a vote on an appeal, waiver or protest unless the member has a conflict of interest which he discloses prior to the vote. All actions of the commission shall be taken by majority vote of the members constituting a quorum present. The commission shall meet at the call of the director when necessary to conduct the business of the commission, subject to the applicable requirements of the Texas Open Meetings Act.

(d) The commission shall adopt reasonable rules for the conduct of its duties, to include procedures for hearings and all other business conducted by the commission.

(Ord. No. 98-253, § 2, 4-8-98)

#### **Sec. 41-65. Enforcement and penalties.**

(a) Violation of this article is unlawful. Failure of any person to comply with any provision of this article shall be punishable upon conviction by a fine of not less than \$100.00 or more than \$500.00. Each day the violation continues shall constitute a separate offense. All authority granted to the city attorney and the director and their designees under this article shall be exercised uniformly on behalf of and against all citizens and property of the city. Prior to the issuance of a citation under

this article, the director shall furnish notice to the last known address of the tower owner of the alleged violation and shall afford the owner a reasonable opportunity to cure the violation, consistent with the risks posed by the violation and the efforts that would be required to cure it.

(Ord. No. 91-1734, § 2, 12-11-91; Ord. No. 98-253, § 2, 4-8-98)

#### **Sec. 41-65.1. Cumulative effect.**

This article is cumulative of other requirements imposed by ordinances and regulations of the city. To the extent of any inconsistency, the more restrictive provision shall govern. Without limitation, the issuance of a permit under this article shall not excuse compliance with the Construction Code, including permits required thereunder.

(Ord. No. 98-253, § 2, 4-8-98; Ord. No. 02-399, § 86, 5-15-02)

#### **Sec. 41-66. City attorney authorized to file suit to abate violation.**

The city attorney is hereby authorized to file suit on behalf of the city in any court of competent jurisdiction to enjoin or abate a violation of this article. All authority granted to the city attorney under this article shall be exercised uniformly on behalf of and against all citizens and property in the city. This authorization shall be cumulative and in addition to any other civil or criminal penalty provisions. The city, acting through the city attorney or any other attorney representing the city, may file an action in a court of competent jurisdiction to recover damages from the owner or the agent of the owner of a tower or tower structure in an amount adequate for the city to undertake any activity necessary to bring about compliance with this article.

(Ord. No. 91-1734, § 2, 12-11-91; Ord. No. 98-253, § 2, 4-8-98)

#### **Sec. 41-67. Transitional provision.**

The provisions of this article shall apply only to towers constructed, placed, or altered after the effective date of this article or amendments thereto,

as applicable, except for the fencing requirements of section 41-54 of this Code which shall be applicable to all towers subject to this article. (Ord. No. 91-1734, § 2, 12-11-91; Ord. No. 98-253, § 2, 4-8-98)

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